

1 Qiang Lu, *Pro se*  
2 3 Dory Lane  
3 Foster City, CA 94404  
4 Telephone: (650) 303-5807  
5 Email: luqiang@cal.berkeley.edu

6 Plaintiff

FILED

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RICHARD W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 OAKLAND DIVISION

10  
11 QIANG LU,

12 Plaintiff,

13 vs.

14 MICHAEL CHERTOFF, Secretary of the  
15 Department of Homeland Security;  
16 EMILIO T. GONZALEZ, Director, U.S.  
17 Citizenship and Immigration Services;  
18 ROBERT S. MUELLER, III, Director of the  
19 Federal Bureau of Investigation;  
20 ALBERTO GONZALES, Attorney General of the  
21 United States;  
22 CHRISTINA POULOS, Director, California  
23 Service Center, U.S. Citizenship and Immigration  
24 Services;  
25 GERARD HEINAUER, Director, Nebraska  
26 Service Center, U.S. Citizenship and Immigration  
27 Services,

28 Defendants.

Case No.: C07-04221-SBA

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION  
FOR SUMMARY JUDGMENT**

Date: March 11, 2008

Time: 1:00 p.m.

**NOTICE OF MOTION**

**TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that on March 11, 2008, at 1:00 p.m. or as soon thereafter as the parties may be heard, this matter will be heard before the Honorable Sandra B. Armstrong, in the District Court of Northern California, Courtroom 3, located at 1301 Clay Street, Oakland, CA 94612.

1 Plaintiff Qiang Lu will and hereby respectfully moves the Court for summary judgment on his petition  
2 for the writ of mandamus, on the ground that there is no genuine issue as to any material fact and that  
3 Plaintiff is entitled to a judgment as a matter of law.

#### 4 MOTION

5 Pursuant to Federal Rules and Civil Procedure 56(c), plaintiff Qiang Lu ("Plaintiff") hereby  
6 moves the Court for Summary Judgment. This motion is based on this Notice of Motion and Motion, the  
7 accompanying Memorandum of Points and Authorities, the Declaration of Yannan Liu, all pleadings  
8 and documents on file in this action, and upon such other matters as may be presented to the Court at the  
9 time of the hearing.

#### 10 STATEMENT OF RELIEF SOUGHT BY PLAINTIFF

11 Plaintiff seeks summary judgment in his mandamus action for the Court to enter an order  
12 requiring the Federal Bureau of Investigation (FBI) to expeditiously complete the background checks on  
13 Plaintiff's and his wife's applications for adjustment of status (Form I-485) and requiring the US  
14 Citizenship and Immigration Services (USCIS) to process their I-485 applications to conclusion within  
15 30 days from the order date. In addition, Plaintiff prays that the Court grant such other relief that may be  
16 just and appropriate, including costs, expenses that resulted from Defendants' unlawful delay in  
17 processing said applications.

#### 18 MEMORANDUM OF POINTS AND AUTHORITIES

#### 19 STATEMENT OF FACTS

20 Plaintiff Qiang Lu and his wife Yannan Liu are citizens of the People's Republic of China. On  
21 August 27, 2004, Plaintiff filed an I-485 application to register for permanent residence with the USCIS  
22 California Service Center. Together with Plaintiff's application, the principal application, a derivative I-  
23 485 application was filed on behalf of Plaintiff's wife, pursuant to 8 C.F.R. § 245.1 (spouse  
24 accompanying principal alien). Both applications have since been pending. Plaintiff either by himself or  
25 through attorneys made a number of inquiries to the USCIS regarding the case status. The replies from  
26 the USCIS indicated that both applications are pending security check at the FBI. In March 2007, 31  
27 months after the filing date, both applications were transferred to the USCIS Nebraska Service Center.  
28 Plaintiff made another inquiry with the USCIS after the case transfer, and was informed that the

1 principal application is still pending. Recently FBI confirmed that requests for both name checks were  
 2 received by FBI on September 15, 2004 (Exhibit 1). To date, both applications have been pending for  
 3 more than 40 months after the filing date.

4 In regard to the derivative application of Plaintiff's wife, Defendants contend that "the status of  
 5 her name check is irrelevant to his claims." Joint Case Management Statement, Docket No. 12, at page  
 6 1<sup>1</sup>. Plaintiff maintains that his wife's I-485 application is immediately relevant to his claims as detailed  
 7 in forthcoming arguments.

## 8 ARGUMENT

### 9 A. INTRODUCTION

10 Summary judgment is appropriate because the pleadings, when viewed in the light most  
 11 favorable to Defendants, demonstrate that there is no genuine issue of material facts and Plaintiff is  
 12 entitled to judgment as a matter of law. Federal Rules and Civil Procedures 56(c); *Celotex Corp. v.*  
 13 *Catrett*, 477 U.S. 317, 322-23 (1986). Plaintiff has presented evidence showing that both the principal  
 14 and the derivative applications are delayed by the USCIS pending FBI name check, despite Defendants'  
 15 challenge to the relevance of the latter application to this case.

### 16 B. THE RELEVANCE OF THE DERIVATIVE I-485 APPLICATION TO THIS CASE

17 Defendants made the contention that "as a *pro se* plaintiff, Plaintiff may not argue for any relief  
 18 for anyone other than himself, and that because his wife's application cannot be adjudicated until his  
 19 application has been decided, there is no delay on her application." (Docket No. 12, at 2). Plaintiff  
 20 disagrees with Defendants' contention on the following grounds.

21 Firstly, the I-485 application of Plaintiff's wife is a derivative application that is based on  
 22 Plaintiff's I-485 application, the principal application, under 8 C.F.R. § 245.1. The derivative applicant  
 23 does not qualify for adjustment of status application independently, but established her eligibility as  
 24 spouse accompanying principal alien. Therefore, the derivative application cannot be decided separately  
 25 from the principal application, as Defendants acknowledged in their contention, and Plaintiff is part of  
 26 the derivative application. The manner in which USCIS processes the two applications also lends  
 27

28 <sup>1</sup> In this document, all docket and page number references to cases in the Northern District of California are based on the records in the PACER database, due to Plaintiff's lack of access to other legal citation sources

1 support to the above statement. In the reply to a status inquiry regarding Plaintiff's application, (Exhibit  
2 2, which had been included in the Original Complaint), the USCIS addressed the reply to "Qiang Lu and  
3 Yannan Liu", and stated that "Your *case* is still pending review ...." (emphasis added). This shows that  
4 the USCIS processes the principal and the derivative applications in close connection, and that Plaintiff  
5 has the right to pursue actions with regard to these applications.

6 Secondly, all pleadings that Plaintiff made in the instant case are for his own relief, not on behalf  
7 of anyone other than himself. As stated in the Original Complaint, Defendants' unreasonably long delay  
8 in adjudication of Plaintiff's and his wife's I-485 applications has caused substantial injury to Plaintiff in  
9 many aspects. While certain part of the injury impacts Plaintiff and his wife individually, a large part of  
10 the injury caused by the excessive delay in the adjudication of his wife's application directly impacts  
11 Plaintiff. One example, for the purpose of illustration rather than limitation, is that Plaintiff's wife has  
12 been forced to apply repeatedly for the annual renewal of her employment authorization document and  
13 travel document due to her pending I-485 application. The expenses resulted from the renewals and legal  
14 services are undue financial burdens that have caused injury directly to Plaintiff. And the injury is  
15 aggravated as Plaintiff is the only income source for his family (Attached Declaration by Yannan Liu).  
16 This is just one example of the clear and present injury Defendant has caused to Plaintiff due to their  
17 failure to adjudicate his wife's application within a reasonable time. Many other aspects of Plaintiff's  
18 life have also been adversely affected by the delay of his wife's I-485 application. Therefore, the I-485  
19 application and name check status of Plaintiff's wife is immediately relevant to this action, and Plaintiff  
20 has a clear and certain right to state his claims against Defendants in connection with his wife's pending  
21 I-485 application.

22 Thirdly, Plaintiff challenges Defendants' claim that the I-485 application of Plaintiff's wife is not  
23 delayed as the derivative application can only be decided after the principal one. The FBI name check,  
24 which both applications are pending, and the subsequent adjudication process by the USCIS are  
25 completely within the administrative authority of Defendants. The USCIS also has under its authority  
26 the ability to expedite the FBI name check for certain cases. Therefore, the responsibility for the  
27 principal and thus the derivation applications being excessively delayed lies entirely with Defendants. In  
28 *Dong v. Chertoff*, No. C 07-0266, Order, Docket No. 17, at 15 N.D. Cal. 2007, the court found that the

1 delay of both plaintiffs' applications (the principal and the derivative) unreasonable. Further more,  
2 whether or not a case has been delayed is to be decided based on the facts related to the processing of  
3 the specific case, and thus is irrespective of whether or not the derivative beneficiary is a plaintiff in the  
4 legal action.

5 C. DEDENFANTS HAVE A NON-DISCRETIONARY DUTY TO ADJUDICATE THE  
6 APPLICATIONS AT ISSUE

7 Plaintiff is entitled to relief under 28 U.S.C. §1361, the federal mandamus statute, and the  
8 Administrative Procedures Act (APA) as a matter of law. 28 U.S.C. §1361 provides that "[t]he district  
9 courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or  
10 employee of the United States or any agency thereof to perform a duty owed to the plaintiff." Mandamus  
11 lies if: (1) the individual's claim is clear and certain; (2) the official's duty is non-discretionary,  
12 ministerial, and so plainly prescribed as to be free from doubt, and (3) no other adequate remedy is  
13 available. *Patel v. Reno*, 134 F. 3d 929, 931 (9<sup>th</sup> Cir. 1997); *Kildare v. Saenz*, 325 F. 3d 1078, 1084 (9<sup>th</sup>  
14 Cir. 2003). The Immigration and Naturalization Act (INA) authorizes the Attorney General of the  
15 United States to adjust the permanent resident status of certain aliens who reside in the United States. 8  
16 U.S.C. § 1255(a). The procedures by which an immigrant can apply to adjust his/her status, either as a  
17 principal applicant or a derivative applicant, to that of a legal Permanent Resident is set in 8 C. F. R.  
18 §245.2. These statues combined establish a clear and certain right to have immigration status adjustment  
19 applications adjudicated. The APA states that federal courts can "compel agency action unlawfully  
20 withheld or unreasonably delayed." 5 U.S.C. § 706(1), and that "with due regard for the convenience  
21 and necessity of the parties or their representatives and with a reasonable time, each agency shall  
22 proceed to conclude a matter presented to it." 5 U.S.C. §555(b). *See Forest Guardians v. Babbitt*, 174 F.  
23 3d 1178 (10<sup>th</sup> Cir. 1999). In *Kaplan v. Chertoff*, No. 06-5304, 2007 U.S. Dist. LEXIS 22935, \*71-72  
24 (E.D. Pa. Mar. 29, 2007) the court found that an APA claim was adequately stated against both the  
25 USCIS and the FBI with respect to delays in adjustment of status and naturalization applications.

26 While Defendants may exercise discretion on how to adjudicate the applications, they have a  
27 non-discretionary duty to process the applications. In a number of mandamus cases, the courts made a  
28 clear distinction between the government agency's discretionary decision on how to adjudicate an

1 application and its non-discretionary duty to adjudicate the application, as opposed to withholding the  
2 decision indefinitely. In *Yu v. Brown*, 36 F. Supp. 2d 922, 931 (D.N.M. 1999), the court emphasized that  
3 there is a difference between the INS's discretion over how to resolve an application and the INS's  
4 discretion over whether it resolves an application. In *Fu v. Gonzales*, No. C 07-00207, Am. Order  
5 Denying Motion to Dismiss, Docket No. 29, at 5, N.D. Cal. 2007, the court concluded that "courts have  
6 jurisdiction at a minimum under the APA because Defendants have a non-discretionary duty to process  
7 the AOS applications within a reasonable time, as distinct from its discretionary authority of whether to  
8 grant or deny the applications", and that (Id. at 6) "Defendants have a ministerial duty to act on  
9 Plaintiffs' AOS applications pursuant to 8 U.S.C. § 1255, within a reasonable time under 5 U.S.C. §  
10 555(b)." In *Toor v. Still*, No. C 07-0645, Order Denying Defendants' Motion to Dismiss, Docket No. 21,  
11 at 5, N.D. Cal. 2007, the Court concluded that "8 U.S.C. Section 1255(a) grants the Attorney General  
12 discretion over whether to grant or deny an application for adjustment, not whether to adjudicate the  
13 application". In the instant case, Plaintiff and his wife have met all statutory requirements for having  
14 their I-485 applications adjudicated, including multiple times of fingerprint check. They have a clear and  
15 certain right to have their applications processed, and processed within reasonable time.

16 D. THE I-485 APPLICATIONS OF PLAINTIFF AND HIS WIFE HAVE BEEN DELAYED  
17 FOR AN UNREASONABLE AMOUNT OF TIME

18 The USCIS has failed to adjudicate Plaintiff's and his wife's I-485 applications within a  
19 reasonable time. Reasonableness of the delay is a factual determination depending on the particular case.  
20 "What constitutes an unreasonable delay in the context of immigration applications depends to a great  
21 extent on the facts of the particular case." *Yu* 36 F. Supp. 2d at 934. In the replies to Plaintiff's multiple  
22 case status inquiries, the USCIS failed to provide any evidence that the applications of Plaintiff and his  
23 wife were being actively worked on, or any explanation for the exceptionally long delay in the FBI name  
24 check process. The extent of the delay in the instant case can be gauged by comparing the delay with the  
25 typical processing time of I-485 applications, which is regularly published by the USCIS in processing  
26 date reports (Exhibit 3). The processing date posted on December 14, 2007 of I-485 applications at the  
27 USCIS California Service Center (where the applications of Plaintiff and his wife were originally filed)  
28 is June 18, 2007, i.e., a delay of six months. At the USCIS Nebraska Service Center, where the



1 applications at issue were transferred to and are currently pending, the I-485 application processing date  
2 as of December 14, 2007 is April 24, 2007, i.e., a delay of less than eight months. These dates clearly  
3 demonstrate that on average I-485 applications are processed within six to eight months after the filing  
4 date. This is in a stark contrast with the applications of Plaintiff and his wife, which to date have been  
5 pending for more than 40 months. Regarding the process statistics of the FBI name check, the USCIS  
6 stated that "In about 80 percent of the cases, no match is found. Of the remaining 20 percent, most are  
7 resolved within six months. Less than one percent of the cases subject to an FBI name check remain  
8 pending longer than six months." See *Dong v. Chertoff*, Docket No. 5, Ex. 1. This clearly shows that  
9 Plaintiff's and his wife's name checks at the FBI have been delayed for far beyond what it takes in more  
10 than 99 percent of the cases. In addition, the USCIS does have the ability to expedite the FBI name  
11 check for certain cases, although USCIS decides not to include excessively delayed cases in their criteria  
12 for expediting (Exhibit 4). Plaintiff and his wife have met all statutory requirements for the adjudication  
13 of their I-485 applications, yet the USCIS or the FBI has not provided any reason why Plaintiff's and his  
14 wife's applications or name checks require such unusually long time. Thus Defendants have  
15 unreasonably delayed processing of the I-485 applications of Plaintiff and his wife, in violation of their  
16 duty required by law.

17 A number of factually similar cases were recently heard by courts in this District with respect to  
18 adjustment of status applications that were delayed by USCIS. In *Singh v. Still*, No. C 06-02458, N.D.  
19 Cal., 2006, the Court granted summary judgment compelling the defendants to adjudicate the I-485  
20 application of the plaintiff, finding that the FBI has a duty to process the name checks and the USCIS  
21 has a duty to adjudicate the I-485 applications within a reasonable time, regardless of which government  
22 agency was responsible for the delay. In *Gelfer v. Chertoff*, No. C 06-06724, Order Granting in Part and  
23 Denying in Part Respondents to Dismiss, Docket No. 17, at 3, N.D. Cal. 2006, the court "does not find  
24 respondents' more than two-year delay in the adjudication of petitioner's application reasonable as a  
25 matter of law." In *Fu v. Gonzales*, Docket No. 29, at 10, the court held that "Plaintiffs have made a  
26 *prima facie* showing that the USCIS unreasonably delayed in acting on that duty for the past 3 years and  
27 4 months." In a few other cases, delays in the adjudication of I-485 applications ranging from close to  
28 two years to over three years were found unreasonable by the courts. See *Toor v. Still*, Docket No. 21, at

10; *Dong v. Chertoff*, Order, Docket No. 17, at 15; *Wu v. Chertoff*, No. C 06-07880, Order Vacating the Hearing and Denying Defendants' Motion to Dismiss, Docket No. 15, at 5, N. D. Cal. 2006.

Plaintiff has no other adequate remedy available. Absent the Court's order to grant the requested relief, the I-485 applications of Plaintiff and his wife will likely remain in limbo for an indefinite amount of time, causing further damage to Plaintiff. In *Singh v. Still*, Docket No. 20-21, at 11, the court held that waiting for an agency to act cannot logically be an adequate alternative to an order compelling the agency to act. Plaintiff has been adversely affected by Defendants' unreasonable delay in adjudication of his I-485 application and the derivative application of his wife. The delay, which to date is over 40 months, has damaged Plaintiff by depriving him of the ability to plan or pursue a future course of action in the United States pending the I-485 applications, by forcing him and his wife to apply repeatedly for the annual renewal of the employment authorization documents and the travel documents, inflicting on him undue financial burdens and unlawfully prolonged restrictions on employment and traveling as well as other rights that lawful immigrants are entitled to.

#### CONCLUSION

Defendants have a non-discretionary duty to adjudicate Plaintiff's I-485 application and the derivative application of his wife, and to do so within a reasonable time. The evidence considered in the light most favorable to Defendants demonstrates that Defendants clearly have failed to perform this duty to the detriment of Plaintiff, who has no other adequate remedy available. For the reasons set forth herein, mandamus relief is warranted. Plaintiff respectfully requests that the Court grant summary judgment in favor of Plaintiff and a writ of mandamus be issued against Defendants.

Dated this 20<sup>th</sup> day of January, 2008

Respectfully submitted,

  
\_\_\_\_\_  
Qiang Lu (Plaintiff)  
Pro se



**LIST OF ATTACHMENTS**

- | <i>Exhibit</i> | <i>Description</i>  |
|----------------|---|
| 1.             | A letter from FBI regarding the name checks of Plaintiff and his wife, dated November 6, 2007                               |
| 2.             | USCIS' reply to Plaintiff's case status inquiry, dated January 14, 2005   |
| 3.             | USCIS Processing Date Reports of the California Service Center and the Nebraska Service Center, posted on December 14, 2007 |
| 4.             | Criteria for expediting FBI name check, published by USCIS on February 20, 2007   |
| 5.             | Declaration of Yannan Liu   |



U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D. C. 20535-0001

WH 614239

November 6, 2007

Mr. Qiang Lu  
Ms. Yannan Liu  
3 Dory Lane  
Foster City, CA 94404

Dear Mr. Lu and Ms. Liu:

Your letter dated August 1, 2007, directed to Mrs. George W. Bush concerning the status of your name checks for immigration purposes, was forwarded to the Department of Justice and subsequently referred to the Federal Bureau of Investigation (FBI) for reply.

A review of the FBI's Name Check Program database revealed that requests were received for the both of you from the United States Citizenship and Immigration Services on September 15, 2004. Both of these submissions are currently in process.

The FBI processes millions of name check requests each year with each requiring thoughtful consideration. We know how important this information is; however, the FBI must also balance the need for national security in preparing the response to each of these requests. The FBI's homeland security mission requires that our name check process be primarily focused on an accurate and thorough result. While an exact date for completion of these reviews cannot be given, please be assured that the results will be made available to the immigration authorities as quickly as possible.

I trust this information will be of assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael A. Cannon", is written over a horizontal line.

for Michael A. Cannon  
Section Chief  
National Name Check Program Section  
Records Management Division

Exhibit 2

U.S. Department of Homeland Security  
P.O. Box 30111  
Laguna Niguel, CA 92607-0111



U.S. Citizenship  
and Immigration  
Services

Date: January 14, 2005

WAC Receipt Number:  
04 240 52424  
04 240 52396

Qiang Lu & Yannan Liu  
3 Dory Lane  
Foster City CA 94404

The following is provided in response to your inquiry sent to the California Service Center:

- ☐ **Pending-**Your case is still pending review and undergoing system checks. Please allow approximately 180 days for completion before submitting additional inquiries. You will be notified by mail once a decision has been made on your case.

**NOTE:** The district offices are no longer seeing customers unless they have an appointment. Please visit our website at: <http://www.Infopass.USCIS.gov> to make an appointment with the district office.

Please call the National Customer Service Center toll free number (800) 375-5283 or visit our website at: <http://www.USCIS.GOV> for additional information. Thank you.

**U.S. Citizenship and Immigration Services  
California Service Center Processing Dates  
Posted December 14, 2007**

The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 16-18 months to process.

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

**Case Services - How do I... know what kind of services are available to me after I file my application or petition?**

Service Center Processing Dates for **California Service Center** Posted December 14, 2007

Form	Application	Processing Timeframe
<b>I-90</b>	Application to Replace Permanent Resident Card	Initial issuance or replacement July 30, 2006
<b>I-102</b>	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94 September 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S. October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S. October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2A - Temporary workers November 30, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers November 15, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees October 16, 2007

<b>I-129</b>	Petition for A Nonimmigrant Worker	E - Treaty traders and investors	September 28, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	L - Intracompany transfers	November 15, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	Blanket L	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	O - Extraordinary ability	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	R - Religious occupation	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	October 16, 2007
<b>I-129F</b>	Petition for Alien Fiance(e)	K-1/K-2 - Not yet married - fiance and/or dependent child	June 18, 2007
<b>I-130</b>	Petition for Alien Relative	U.S. citizen filing for a spouse, parent, or child under 21	June 18, 2007
<b>I-130</b>	Petition for Alien Relative	U.S. citizen filing for an unmarried son or daughter over 21	January 17, 2003
<b>I-130</b>	Petition for Alien Relative	U.S. citizen filing for a married son or daughter over 21	April 30, 2001
<b>I-130</b>	Petition for Alien Relative	U.S. citizen filing for a brother or sister	April 30, 2001
<b>I-130</b>	Petition for Alien Relative	Permanent resident filling for a spouse or child under 21	January 01, 2005
<b>I-130</b>	Petition for Alien Relative	Permanent resident filling for an unmarried son or daughter over 21	February 07, 2005
<b>I-131</b>	Application for Travel Document	All other applicants for advance parole	September 16, 2007
<b>I-212</b>	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	June 18, 2007
<b>I-360</b>	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	March 02, 2007
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	June 18, 2007
<b>I-526</b>	Immigrant Petition By Alien Entrepreneur	For use by an entrepreneur who wishes to immigrate to the United States	June 18, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	September 16, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	September 16, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	September 16, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	All other change of status applications	September 16, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	September 16, 2007

<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	September 16, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	September 16, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	All other extension applications	September 16, 2007
<b>I-612</b>	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	March 14, 2007
<b>I-751</b>	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	June 18, 2007
<b>I-765</b>	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	September 29, 2007
<b>I-765</b>	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	November 15, 2007
<b>I-765</b>	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	September 29, 2007
<b>I-765</b>	Application for Employment Authorization	Based on TPS for Honduras/Nicaragua [(c)(19), (a)(12)]	September 29, 2007
<b>I-765</b>	Application for Employment Authorization	Based on TPS for El Salvador [(c)(19)(a)(12)]	September 29, 2007
<b>I-765</b>	Application for Employment Authorization	All other applications for employment authorization	September 29, 2007
<b>I-817</b>	Application for Family Unity Benefits	Voluntary departure under the family unity program	May 15, 2007
<b>I-824</b>	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	June 18, 2007
<b>I-829</b>	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors)	June 18, 2007
<b>I-829</b>	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors) based on PL107-273	September 10, 1997

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## U.S. Citizenship and Immigration Services Nebraska Service Center Processing Dates Posted December 14, 2007

The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 16-18 months to process.

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

### Case Services - How do I... know what kind of services are available to me after I file my application or petition?

Service Center Processing Dates for **Nebraska Service Center** Posted December 14, 2007

Form	Application or Petition	Processing Timeframe
<b>I-90</b>	Application to Replace Permanent Resident Card	Initial issuance or replacement June 18, 2007
<b>I-90</b>	Application to Replace Permanent Resident Card	10-year renewal May 31, 2007
<b>I-90A</b>	Application to Replace Permanent Resident Card	Initial issuance or replacement for Special Agricultural Workers (SAW) June 18, 2007
<b>I-102</b>	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94 September 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S. October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S. October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2A - Temporary workers November 30, 2007

<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	November 15, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	L - Intracompany transfers	November 15, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	Blanket L	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	O - Extraordinary ability	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	R - Religious occupation	October 16, 2007
<b>I-129</b>	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	October 16, 2007
<b>I-131</b>	Application for Travel Document	Permanent resident applying for a re-entry permit	July 14, 2007
<b>I-131</b>	Application for Travel Document	Refugee or aslyee applying for a refugee travel document	July 14, 2007
<b>I-131</b>	Application for Travel Document	Haitian Refugee Immigrant Fairness Act (HRIFA) principal applying for advance parole	September 16, 2007
<b>I-131</b>	Application for Travel Document	Haitian Refugee Immigrant Fairness Act (HRIFA) dependent applying for advance parole	March 20, 2007
<b>I-131</b>	Application for Travel Document	All other applicants for advance parole	September 16, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Extraordinary ability	April 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Outstanding professor or researcher	April 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Multinational executive or manager	April 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Schedule A Nurses	April 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability	April 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability requesting a National Interest Waiver	April 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Skilled worker or professional	April 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Unskilled worker	April 06, 2007
<b>I-212</b>	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	June 18, 2007
<b>I-360</b>	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	June 18, 2007
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	April 24, 2007
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Based on grant of asylum more than 1 year ago	October 01, 2006
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Based on refugee admission more than 1 year ago	December 21, 2006
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Under the Haitian Refugee Immigrant Fairness Act (HRIFA)	June 18, 2007

<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Under the Indochinese Adjustment Act	June 18, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	May 12, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	May 12, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	May 12, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	All other change of status applications	May 12, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	May 12, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	May 12, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	May 12, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	All other extension applications	May 12, 2007
<b>I-612</b>	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	May 04, 2007
<b>I-730</b>	Refugee/Asylee Relative Petition	Petition for accompanying family members of a refugee or an asylee	September 29, 2006
<b>I-751</b>	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	February 09, 2007
<b>I-765</b>	Application for Employment Authorization	Based on an approved asylum application [(a)(5)]	November 15, 2007
<b>I-765</b>	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	September 29, 2007
<b>I-765</b>	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	November 15, 2007
<b>I-765</b>	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	September 29, 2007
<b>I-765</b>	Application for Employment Authorization	All other applications for employment authorization	September 29, 2007
<b>I-817</b>	Application for Family Unity Benefits	Voluntary departure under the family unity program	June 18, 2007
<b>I-824</b>	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	February 09, 2007

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Exhibit 4

Office of Communications

U.S. Department of Homeland Security

**U.S. Citizenship  
and Immigration  
Services**

February 20, 2007

# USCIS Update

**USCIS CLARIFIES CRITERIA TO EXPEDITE FBI NAME CHECK***Federal Litigation Removed as Sole Basis to Expedite Check*

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) is no longer routinely requesting the FBI to expedite a name check when the only reason for the request is that a mandamus (or other federal court petition) is filed in the case.

USCIS may continue to request an expedited FBI name check if the case meets one of the other approved criteria, including:

1. Military deployment,
2. Age-out cases not covered under the *Child Status Protection Act*, and applications affected by sunset provisions such as diversity visas,
3. Significant and compelling reasons, such as critical medical conditions, and
4. Loss of social security benefits or other subsistence at the discretion of the USCIS District Director.

The FBI name check is an invaluable part of the security screening process, ensuring that our immigration system is not used as a vehicle to harm our nation or its citizens. USCIS also requests an FBI name check to screen out people who seek immigration benefits improperly or fraudulently and ensure that only eligible applicants receive benefits.

Information about the FBI name check is available on the USCIS website at <http://www.uscis.gov> or by calling the USCIS National Customer Service Center toll free at 1-800-375-5283.

–USCIS –

On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.

1 Qiang Lu, *Pro se*  
2 3 Dory Lane  
3 Foster City, CA 94404  
4 Telephone: (650) 303-5807  
5 Email: luqiang@cal.berkeley.edu

6 Plaintiff

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 OAKLAND DIVISION  
10

11  
12 QIANG LU,

13 Plaintiff,

14 vs.

15 MICHAEL CHERTOFF, Secretary of the  
16 Department of Homeland Security;  
17 EMILIO T. GONZALEZ, Director, U.S.  
18 Citizenship and Immigration Services;  
19 ROBERT S. MUELLER, III, Director of the  
20 Federal Bureau of Investigation;  
21 ALBERTO GONZALES, Attorney General of the  
22 United States;  
23 CHRISTINA POULOS, Director, California  
24 Service Center, U.S. Citizenship and Immigration  
25 Services;  
26 GERARD HEINAUER, Director, Nebraska  
27 Service Center, U.S. Citizenship and Immigration  
28 Services,

Defendants.

) Case No.: C07-04221-SBA

) **DECLARATION OF YANNAN LIU**  
) **IN SUPPORT OF PLAINTIFF'S**  
) **MOTION FOR SUMMARY JUDGMENT**


25 I, Yannan Liu, the undersigned, do hereby declare the following under penalty of perjury:

- 26 1. I am the wife of Qiang Lu, the plaintiff of case C07 04221 SBA.  
27 2. I have been unemployed since February, 2006.

28 I declare under penalty of perjury that the foregoing is true and correct.

1 Executed on the 20<sup>th</sup> day of January, 2008.

2  
3 Respectfully submitted,

4  
5   
6 Yannan Liu  
7 3 Dory Lane  
8 Foster City, CA 94404  
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